



STATE OF MISSOURI
Department OF ELEMENTARY AND SECONDARY EDUCATION
INVITATION FOR BID
Amendment 001

IFB NO. EL/Civics 0007

TITLE: English Literacy/Civics Award Program

ISSUE DATE: March 3, 2006

CONTACT PERSON: Alice Kirsch

PHONE NO.: (573) 751-2571

E-MAIL: Alice.Kirsch@dese.mo.gov

RETURN BID NO LATER THAN: 4:00 p.m., April 21, 2006

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package.

RETURN BID TO:

MAILING ADDRESS (first class or priority):

**ADULT EDUCATION AND LITERACY
SPECIAL LITERACY
DEPT OF ELEMENTARY AND SECONDARY
P.O. BOX 480
JEFFERSON CITY MO 65102-0480**

STREET ADDRESS (overnight or hand delivery):

**ADULT EDUCATION AND LITERACY
SPECIAL LITERACY
DEPT OF ELEMENTARY AND SECONDARY ED
205 JEFFERSON STREET (2ND FLOOR)
JEFFERSON CITY MO 65101**

CONTRACT PERIOD: July 1, 2006 thru June 30, 2007 with renewal see 2.7.1

The contractor hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid. The contractor further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The contractor further agrees that upon receipt of an authorized purchase order from the Department of Elementary and Secondary Education (the Department) or when this IFB is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the contractor and the Department.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE
PRINTED NAME (Include Dr., Mr., Mrs., Ms., or Miss)		TITLE
COMPANY NAME		
MAILING ADDRESS		
CITY, STATE, ZIP		
VENDOR NO. (IF KNOWN)		FEDERAL EMPLOYER ID NO.
PHONE NO.	FAX NO.	E-MAIL ADDRESS

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:	
TITLE	DATE

Amendment 001
Summary of Changes to IFB

1. Section 2.3.1, F. is revised to read:
Contractors are advised that no more than 21% of the total budget (Attachment A) may be used for administration (Category II). No more than 20% of the total budget may be used for equipment, including Computer Assisted Instruction Labs.
2. Section 2.3.1, Letters changed from J to I and from H to I
3. Section 2.6.1, B. is revised to read:
Payment will be made quarterly to the contractor unless a different arrangement is requested and approved in writing prior to the contract being awarded.
4. Section 2.6.2, A. is revised to read:
On the face of each expenditure report, the contractor must identify the program name and actual incurred expenses.
5. Section 3.4, C. is eliminated.
6. Section 3.4, Plan of Operation section: Eliminate the second paragraph.
7. Section 3.5.1, Use of Available Community Resources section is eliminated.
8. Section 3.6.1. is revised to read:
Bidders should describe the cooperative arrangements with other local entities that will be used for delivery of services, specifically:
 - A. What other educational services (tutoring, technological support, library, etc.) will be provided to the students to assist them in attaining their educational goals in the program?
 - B. What guidance is provided for post-program activities?
 - C. What support services will be provided to facilitate and assist the students in their educational endeavors? These might include childcare, transportation, counseling, job and career guidance, curriculum for special needs adults, innovative delivery of instruction, and other such services.
9. Attachment A has been revised.
10. Attachment B has been revised.
11. Attachment C, Item 12 is revised to read:
Record and keep on file, all required information on all students in the EL/Civics classes.

INTRODUCTION AND GENERAL INFORMATION

1.1 Purpose:

- 1.1.1 This document constitutes an invitation for sealed bids from prospective bidders for the English Language/Award Program.
- 1.1.2 Organization – This document, referred to as an Invitation For Bid (IFB), is divided into the following parts:
 - 1. Introduction and General Information
 - 2. General Contractual Requirements
 - 3. Bid Submission Information
 - 4. Exhibits/Attachments as Required
 - 5. Terms and Conditions

1.2 Pre-Bid Conference:

- 1.2.1 A pre-bid conference regarding this IFB will be held on **March 13, 2006** at 1:00 p.m., in Jefferson City, Missouri, within the Jefferson Building, 205 Jefferson St., 2nd Floor.
- 1.2.2 Attendance is not required in order to submit a response; however, bidders are encouraged to attend since the information relating to this IFB will be discussed in detail. Bidders should bring a copy of the IFB since it will be used as the agenda for the pre-bid conference.
- 1.2.3 Bidders are strongly encouraged to advise the Department within five working days of the scheduled pre-bid conference of any special accommodations needed for disabled personnel who will be attending the conference so that these accommodations can be arranged.
- 1.2.4 The IFB will be available on the Department's Adult Education and Literacy web site. Bidders are strongly encouraged to visit this site frequently for up-dates and amendments to this IFB.

1.3 Background Information:

- 1.3.1 The purpose of the English Literacy/Civics Program, as stated by the U.S. Department of Education, is to include all of the following:
 - A. Provide integrated services that incorporate English literacy and civics education.
 - B. Provide an educational program that emphasizes contextual instruction on the rights and responsibilities of citizenship, naturalization procedures, civic participation, and U.S. History and government to help students acquire the skills and knowledge to become active and informed parents, workers, and community members. Examples of activities which would be allowable include academic English instruction, tours, on-site visits of the local law enforcement agencies, courts, political subdivisions, businesses, guest speakers, and other points of interest relating to citizenship which are in close proximity to the student's residence.
 - C. Assist immigrants and other Limited English Proficiency (LEP) persons to gain proficiency in English and navigate governmental, educational, workplace systems and key institutions to enable them to effectively participate in education, work, and civic opportunities.
- 1.3.2 Although an attempt has been made to provide accurate and up-to-date information, Department does not warrant or represent that the background information provided herein reflects all relationships or existing conditions related to this IFB.

2. GENERAL CONTRACTUAL REQUIREMENTS

- 2.1 The contractor must develop and implement English Literacy/Civics services within a specified geographical area. The original contract period shall be as stated in the IFB.
- 2.1.1 The smallest geographical area approvable for service delivery is one school district. A service provider may serve more than one school district and may, therefore, receive an award for each of the school districts served.

If a school district has a total population of 20,000 or more eligible students the service provider may receive no more than four approved bids to serve the district's needs.

Only one program per geographical area will be funded, with the exception of the aforementioned conditions. Multiple programs serving the same geographical area should negotiate a cooperative service agreement. If a cooperative service agreement cannot be negotiated between the local service providers, the Department reserves the right to contact applicants for clarification of the application to determine the most cost effective and best plan to serve eligible participants.

2.1.2 Entities who are eligible to receive funds awarded by this IFB include:

- A. Local education agencies;
- B. Community-based organizations;
- C. Volunteer literacy organizations;
- D. Institutions of higher education;
- E. Public or private non-profit agencies;
- F. Libraries;
- G. Public housing authorities;
- H. A non-profit institution that is not described in A through G listed above and can demonstrate the ability and financial stability to provide literacy services to the adults;
- I. A consortium of any otherwise eligible agencies, organizations, institutions, libraries, or authorities described in A through G listed above; and
- J. Faith based organizations.

Applicants are encouraged to partner with other eligible entities, as well as with businesses and industries that may serve as host sites. Local collaborative efforts should ensure that program services are **not duplicative** and are of sufficient size and intensity to ensure maximum impact in the communities being served.

2.2 Activity Plan Development Requirements:

2.2.1 Bids must reflect the applicant's ability to develop and operate a comprehensive English Literacy/Civics program that serves the specific needs of a target population of individuals who:

- A. Have attained 16 years of age;
- B. Do not have a high school diploma, a GED, or the basic academic skills necessary to obtain and retain fulltime meaningful employment; and,
- C. Are not currently enrolled in any secondary school.

When providing Civics programs/services with AEL funds, the local program will coordinate and utilize all programs and services funded by the Title II of the Workforce Investment Act, the Adult Education and Family Literacy Act, to provide these services prior to expending AEL funds for activities other than adult education activities. An eligible provider shall attempt to coordinate with programs and services that are not funded under the Adult Education and Family literacy Act prior to using funds for family literacy. See Section 231(d) of the Workforce Investment Act. The applicant must document attempts to utilize other sources of funds.

2.2.2 The contractor shall agree and understand that the state agency shall have complete and total approval authority of contractor's activity plan or any part thereof and shall have the expressed right to modify, change, or delete all or any part of the plan at anytime.

2.2.3 The contractor may be required to develop and submit a new or revised activity plan at other times throughout the contract period as well as for the renewal period, if the contract is renewed for an additional period. The contractors shall prepare and submit all such future activity plans within a timeframe stipulated by the state agency.

2.3 Activity Plan Implementation Requirements:

2.3.1 The contractor shall implement and satisfy all requirements of the detailed activity plan as submitted and approved by the state agency. The contractor shall perform, over see, and manage in accordance with the detailed activity plan developed and approved by the state agency. The contractor shall manage all aspects of the activity to insure all parts of the activity are carried out, including, but not necessarily limited to the conditions listed below:

- A. Programs will be funded for the period of July 1, 2006 to June 30, 2007. The contract is for one year with the possibility of 2 one-year renewals. Renewals will be based on satisfactory performance and the availability of funds.
- B. The contract shall not bind, nor purport to bind, the Department for any contractual commitment in excess of the original contract period.
- C. Non-governmental, non-profit, non-tax-based entities are advised that they may be required to sign an additional contract with the Department.
- D. The maximum award amount to any applicant will be no greater than \$75,000.00.
- E. The programs shall seek help from other outside sources.
- F. Contractors are advised that no more than 21% of the total budget (Attachment A) may be used for administration (Category II). No more than 20% of the total budget may be used for equipment, including Computer Assisted Instruction Labs.

The Department has the right to reduce the budget based on program plan and/or funds available.

- G. All programs shall conduct instructional activities to address academic needs of all participants
Student progress shall be measured by pre-testing and post-testing each adult student enrolled. The tests to be used shall be the Tests of Adult Basic Education or Comprehensive Adult Student Assessment System. Adult students will be tested in the areas of reading language, or mathematics to determine program impact on the students. In addition, programs must meet the following requirements:

- 1. A minimum of 80% of all students enrolled will be pre-tested.
- 2. A minimum of 55% of all students enrolled will be post-tested.

All programs shall use the state's Adult Computer Education System (ACES) to report participants' demographics, assessment, and exit data required by the National Reporting System.

- H. Instructional programs must provide a minimum of 19 hours of instruction per week when the program is operational during the award period of July 1, 2006 through June 30, 2007. The 19 hours/week is in addition to any normal hours of operation through an existing program. The hours may be obtained at multiple sites, however, as stated in 2.2.3, the state agency shall have complete and total approval authority of contractor's activity plan or any part thereof and shall have the expressed right to modify, change, or delete all or any part of the plan at anytime.
- I. Approved applicants must employ AEL certified teachers before a program of instruction may begin. Other staff must also meet qualifications as set by the Department before the program may begin its operation. Certification of those employed is the responsibility of the successful bidder. AEL certified teachers must provide supervisory assistance to literacy volunteers and other non-certified program staff.
- J. To ensure coordination and collaboration at the local level, each project must have an advisory committee. Collaborative partners may include, but are not limited to, representatives of public libraries, WIA Local entities, Even Start/Family Literacy programs, local AEL programs, volunteer literacy groups, public schools, Caring Communities programs, and local welfare, social services, and economic development staff. Existing committees meeting this request are acceptable.

2.3.2 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

2.4 Reporting Requirements:

2.4.1 The contractor shall submit the reports identified hereinafter to the Department along with any other reports which may be deem necessary to improve the reporting of data to the National Reporting System.

Contractors will be required to submit quarterly program status reports which will include: enrollment and testing information, contact hour performance, financial reports, equipment inventory, and other reports as required by the State Director of Adult Education and Literacy. Failure to submit such data is deemed sufficient cause of termination of funding.

- 2.4.2 Enrollment, assessment, and exit data must be submitted to the Department on a regular basis using the electronic system established for all AEL Programs.

2.5 Financial Requirements:

- 2.5.1 The contractor shall maintain financial and accounting records and evidence pertaining to the Contract in the accordance with generally accepted accounting principles and other procedures by the State. These records must be made available at all reasonable times to the State agency and/or its designees during the contract period and any renewal period, and for three years from the date of final payment on the contract or contract renewal period.
- 2.5.2 The contractor shall permit governmental auditors and authorized representatives of the State to have access for the purpose of audit or examination of any of the books, documents, papers, and records of the contractor's recording receipts and disbursements of any of the funds made available to the contractor under the contract at any reasonable time. The contractor further agrees that any audit exception noted by governmental auditors shall not be paid by the State agency and shall be the sole responsibility of the contractor, provided that it may contest any such exception by any legal procedure it deems appropriate and that the State agency will pay the contractor all amounts which may ultimately be held entitled to receive as a result of any such legal action.
- 2.5.3 The contractor shall agree and understand that the State of Missouri does not make advanced payments to the contractor for any services performed or goods purchased or provided.
- A. The contractor must insure that all services have been provided or obligated prior to submitting an invoice to the State agency for payment/reimbursement from the State agency.
 - B. The contractor shall agree and understand that any amount funded per the contract is subject to appropriations made by the General Assembly and signed into law by the Governor. In addition, the total budget amount described herein is also subject to reduction by executive order and/or by the administrative policy of the State when deemed in the best interest of the Department.

2.6 Invoicing and Payment Requirements:

- 2.6.1 In order to obtain reimbursement for expended funds, the contractor must adhere to the following guidelines:
- A. The budget indicates categories in which expenditures are authorized and the maximum amount authorized by expenditures in each category. The budget may be amended by submitting a request in writing to the Director of AEL. Reimbursement from federal funds will be made for the period covered by the budget not to exceed the amount authorized in specific categories.
 - B. Payment will be made quarterly to the contractor unless a different arrangement is requested and approved in writing prior to the contract being awarded.
 - C. The final payment will be made after the Expenditure Report is submitted to the State Director of Adult Education and Literacy on or before May 15. Final adjustment will be made on or before July 10 of the following fiscal year.
 - D. Expenditures made prior to the approval dates are not reimbursable.
 - E. Expenditures and/or legal obligations made during the contract period must be paid prior to June 30 of the fiscal year. Exceptions must be approved by the Department.
- 2.6.2 The firm, fixed price shall constitute the total amount due to the contractor for all services specified in the requirements of this document unless services are specially listed as reimbursable in the paragraph related to the reimbursements, below.

- A. On the face of each expenditure report, the contractor must identify the program name, and actual incurred expenses.
- B. Upon receipt and approval of a properly prepared expenditure report and all required reports and documentation, the State agency shall reimburse the contractor the allowed expenses according to the approved budget page on the Special Literacy Bids.

2.6.3 Other than the approved expenditures on the budget page, no other payment or reimbursements shall be made to the contractor for any reason whatsoever.

2.7 Other Contractual Requirements:

2.7.1 Contract Period: The original contract period shall be as stated in the IFB. The contract shall not bind, nor purport to bind, the Department for any contractual commitment in excess of the original contract period. The Department shall have the right, at its sole option, to renew the contract for two additional one-year periods, or any portion thereof. In the event Department exercises such right, all terms and conditions, requirements, and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.

At the time of renewal, the Department will send a letter of instructions relating to renewal procedures.

- A. Renewal Period - If the option for renewal is exercised by the Department, the contractor shall agree that the award during the renewal period shall not exceed the original award.
- B. The Department does not automatically exercise its option to renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.

2.7.2 Termination: The Department reserves the right to terminate the contract at any time, for the convenience of the Department, without penalty or recourse, by giving written notice to the bidder at least 30 calendar days prior to the effective date of such termination. In the event of termination to this paragraph, the following shall apply:

- A. As directed by the Department, the bidder shall either cancel all open commitments previously made per contract or (without entering any new commitments) shall continue with execution of such open commitments.
 - 1. If the open commitments are cancelled, the Department shall pay all costs (including penalties) resulting from the cancellation.
 - 2. If such commitments continue to be executed, the contractor shall be entitled to be paid for the contractor's services pursuant to the requirements of the contract, as if such cancellation had not occurred.

2.7.3 Cancellation: The Department may cancel the contract at any time for a breach of any contractual obligation or non-compliance with applicable State and/or Federal laws, regulations, assurances, or policy statements by providing the contractee with a written notice of such cancellation. Should the Department exercise its right to cancel the contract for such a reason, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the bidder.

2.7.4 Property of Department: The bidder shall agree and understand that all deliverables developed as a result of the contract, shall become the property of the Department with all rights and interests for present and future use deemed appropriate by the Department.

- A. The bidder shall be responsible for obtaining copyrights as appropriate in the name of the Department as instructed and approved by the Department. If approved, the bidder shall be reimbursed the actual cost paid for obtaining any copyright and registration fee or logo.
- B. The Department shall have the full right to reproduce and/or use any products derived from the bidder's work under the contract without payment of any royalties, fees, etc. except for those fees, royalties, etc. charged by the subcontractor, provided that:
 - 1. The subcontract requires the payment of such royalties, fees, etc. and
 - 2. The Department agrees to pay the royalties, fees, etc. for continuous use of the product, prior to performance by the subcontractor or use the subcontractor's property.
- C. The bidder shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports,

documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the Department.

- D. The bidder shall defend, indemnify and hold harmless the Department, including its officers, agents, employees and assigns, in all suits of law or in equity alleging patent, trademark, or copyright infringement, defamation (libel and/or slander), violation of privacy rights, violation of the right of publicity, misappropriation of trade secrets or unfair competition concerning or arising from the bidder's performance or products produced under the terms of the contract.

2.7.5 Bidder Liability: The bidder shall be responsible for any and all injury or damage as a result of the bidder's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition to the liability imposed upon the bidder on account of personal injury, bodily injury (including death), or property damage suffered as a result of the bidder's negligence, the contractor assumes the obligation to save the Department, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The bidder also agrees to hold the Department, including its employees and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the bidder under the terms of the contract

- A. However, the bidder shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the Department, including its employees and assignees.

2.7.6 Insurance: The bidder shall understand and agree the Department cannot save and hold harmless and/or indemnify the bidder or employees against any liability incurred or arising as a result of any activity of the bidder or any of the contractor's employees related to the bidder's performance under the contract. Therefore, the bidder must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the Department, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

2.7.7 Bidder Status: The bidder represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the Department. Therefore, the bidder shall assume all legal and financial responsibility for taxes. FICA, employee fringe benefits, worker compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the Department, its officers, agents and employees, harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

2.7.8 Coordination: The bidder shall fully coordinate all contract activities with those activities of the State agency. As the work of the bidder progresses, advice, and information on matters covered by the contract shall be made available by the bidder to the Department throughout the effective period of the contract.

2.7.9 Subcontractors: Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligation agreed to by the contractor and the Department and to ensure that the Department is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matter described in the contract between the Department and the bidder. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The bidder shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The bidder must obtain acknowledge from the Department prior to establishing any new subcontracting arrangements and before changing any subcontractors.

2.7.10 Personnel: The bidder agrees and understands that the Department's agreement to the contract is predicated in part on the utilization of certified individual(s). Therefore, the contractor agrees that should substitution of individual(s) and/or personnel be necessary these substitutions shall not be made without the prior written approval of the Department. The bidder further agrees that any substitution made pursuant to this paragraph must be equal too or better than those originally proposed and that the State agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The Department agrees that an approval of a substitution will not be unreasonably withheld.

- 2.7.11 **Transition:** Upon award of the contract, the bidder shall work with the Department and any other organizations designated by the Department to insure an orderly transition of services and responsibilities under the contract and to insure the continuity of those services required by the Department.
- A. Upon expiration, termination, or cancellation of the contract, the contractor shall assist the Department to insure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the Department, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:
1. The contractor shall deliver, FOB destination, all records, documentation, etc., which were required to be produced under the terms of the contract.
 2. The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed 30 calendar days after the expiration, termination, or cancellation date of the contract for a price not to exceed those prices set forth in the contract.
 3. The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the Department, in order to insure the completion of such service prior to the expiration of the contract.

3. BID SUBMISSION INFORMATION

3.1 Submission of Bids

3.1.1 ELECTRONIC SUBMISSION OF BIDS THROUGH THE ON-LINE BIDDING WEBSITE IS **NOT** AVAILABLE FOR THIS IFB. FAXED BIDS WILL **NOT BE ACCEPTED** FOR THIS IFB.

3.1.2 When submitting a bid, the bidder should include three additional copies along with their original bid for a total sum of four.

Each copy of the bid should be individually bound with a rubber band or binder clip. The original bid should be clearly identified and placed on top of the three copies. Bids should not be enclosed within a binder of any kind, nor should they be three-hole punched.

3.1.3 The bidder must complete and submit the following attachments with their bid:

- A. Budget Page (Attachment A)
- B. Class Schedule Form (Attachment B)
- C. Minimum Quality Assurances (Attachment C)

3.1.4 To facilitate the evaluation process, the contractor is encouraged to organize their bid into distinctive sections that correspond with the individual evaluation categories described herein.

- A. Each distinctive section should be titled with each individual evaluation category and all material related to that category should be included therein.
- B. The bid should be page numbered.
- C. The signed page one from the original IFB and all signed amendments should be placed at the beginning of the bid.

3.1.5 The bidder is cautioned that it is the offertory's sole responsibility to submit information related to the evaluation categories and that the Department is under no obligation to solicit such information if it is not included with the bid. The failure to submit such information may cause adverse impact on the evaluation of the bid.

3.1.6 **Contacts:** Bidders and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the IFB, the evaluation, etc. to the contact person indicated on the first page of the IFB. Bidders and their agents may not contact any other state employee regarding any of those matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Bidders and their agents who have questions regarding this matter should contact the contact person.

3.2 Evaluation and Award Process

- 3.2.1 After determining that a bid satisfies the mandatory requirements stated in the IFB, the evaluator(s) shall use both objective analysis and subjective judgment in conducting a comparative assessment of the bid in accordance with the evaluation criteria stated below:
- | | |
|--------------------------------|-----|
| A. Experience and Reliability | 15% |
| B. Assessment of Program Needs | 24% |
| C. Method of Performance | 37% |
| D. Community Collaboration | 8% |
| E. Budget Information | 16% |
- 3.2.2 After an initial screening process, a question and answer conference or interview may be conducted with the contractor, if deemed necessary by the Department. In addition, the contractor may be asked to make an oral presentation of their bid during the conference. Attendance cost at the conference shall be at the contractor's expense. All arrangements and scheduling shall be coordinated by the Department.

APPLICATION NARRATIVE

Please prepare a detailed narrative of not more than 20 pages for the categories below. Strategies/activities must be described for each item, where applicable. Please be specific and include examples to illustrate techniques and/or procedures that will be used.

Provide a one page overall summary of the program/project to be funded.

3.3 Evaluation of Bidder's Experience and Reliability:

- 3.3.1 Experience and reliability of the bidder's organization are considered subjectively in the evaluation process. Therefore, the bidder is advised to submit any information, which documents successful, reliable, and creative experience in past performances, especially those performances related to the requirements of the IFB. Although outcomes cannot be guaranteed, a level of confidence for potential success needs to be conveyed. This confidence can be created by describing one or more of the following:
- A. Past effectiveness of literacy services provided by the applicant;
 - B. Past effectiveness of similar services provided for other populations;
 - C. Unique qualifications of administrative personnel, instructional personnel, and other staff that would contribute to the likelihood of success; or
 - D. Resources at the disposal of the applicant that would contribute to the success of the program.
- 3.3.2 Reference Information – The bidder should submit, in any format, the names, addresses, and phone numbers of organizations for whom services such as those described in this IFB have been provided.

3.4 Assessment of Program/Project Need: (Evidence that the program or project will offer services not currently supported by AEL funds.)

Provide demographic evidence of the English Literacy/Civics needs of the targeted population not currently being met by other programs or projects using local, state, and/or federal data to document the need for the program/project.

- A. Describe the English Literacy and Civics needs of the target population within the geographic area. The applicant shall survey each school district served. The survey shall consist of a review of U.S. Census statistical information, and other federal and state reports on English as a Second Language (ESL), workplace literacy and limited English proficient literacy needs within the area to be served. The applicant shall include results of discussions with business and industry, government organizations, workforce development agencies, labor organizations, social service organizations, educational institutions, social/fraternal organizations, etc., which identify the needs of the area. Survey data by school district should be included as an appendix to the application. Include sources of all statistical data. Surveys can be conducted via a multitude of methods including, but not limited to, pen-and-pencil forms, oral interviews/discussions, review of pertinent U.S. Census data, and review of additional federal and state reports.

For the purposes of this survey, the target population is defined as individuals who have attained 16 years of age; who do not have a high school diploma, a GED, or who do not have the basic education skills to obtain and retain full-time meaningful employment; and are not enrolled in school.

- B. Describe the specific recruitment strategies to inform a wide cross section of the population of the availability and benefits of the program.

3.5 Method of Performance

- 3.5.1 Bids will be evaluated based on the bidder's distinctive plan for performing the requirements of the IFB. In the written bid, the bidder should provide a written method of performance including, but not limited to, the items listed below. The bidder should utilize any format desired to submit a Proposed Method of Performance.

Addressing Target Population Needs

Each application will be reviewed to determine the quality of the program design and plan of operation, including the extent to which the program is comprehensive. The program design should be easily understood, with clear descriptions of the proposed project, including the target population and proposed services. The program design should be student centered. The narrative should provide specific details as to how the award program will serve one or more of the following:

- A. Describe how you will address the specific needs of the target population.
- B. Include a detailed schedule of classes to be provided to each school district listing the physical address of each proposed class. Include any policy used for canceling classes and notification of students.

Student Progress

Each application will be reviewed to determine the extent to which the applicant proposes to accomplish and document student progress.

- A. Describe specific methods the program will employ to objectively measure student progress in each of the following areas as defined by the National Reporting System (NRS) for Adult Education:
 - 1. Beginning Literacy ESL;
 - 2. Beginning ESL;
 - 3. Low Intermediate ESL;
 - 4. High Intermediate ESL;
 - 5. Low Advanced ESL;
 - 6. High Advanced ESL;
 - 7. Workplace Literacy/Life Skills;
 - 8. Citizenship (voter registration); and
 - 9. Family Literacy (increased involvement in children's education and literacy).
- B. Describe methods and show examples of how student progress will be documented at the local level; i.e., student records, pre and post-test, etc. Indicate how student progress will be utilized to develop appropriate instructional strategies for each individual student.
- C. Describe the system to follow-up on individuals who leave the program early.

Plan of Operation

Applications will be reviewed to determine the quality of the plan of operation for the project, including the extent to which the program will serve the target audience. The applicant must include a timeline of the activities for implementation.

Program Goals and Objectives

Each applicant must provide goal statements, which relate directly to the stated need and include the expected overall results of the program. Describe the expected learner outcomes that can be easily communicated, stated in measurable terms, and reflected in program evaluation. Programs must document outcomes.

Evaluation Plan

Provide regular and systematic evaluation in qualitative terms of the success of the program in achieving its goals and objectives. This section should describe how the attainment or degree of attainment of each objective is to be measured.

- A. Provide for frequent feedback from evaluation data derived from participants, teachers, coordinating agencies, and community groups in order to improve the effectiveness of the program.
- B. Include a description of the methods and techniques the applicant plans to make available to perform the evaluation process.
- C. Describe the management information system(s) that the applicant will utilize to report participant outcomes and to monitor program performance against the core indicators, state specific performance measures and locally derived performance measures. Indicate how the local director will utilize data to improve/enhance program performance.

- 3.5.2 The bidder should submit miscellaneous information, to document whether the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly, or a statewide elected official. The information should include name, employer and location of employer.

3.6 Community Collaboration

- 3.6.1 Bidders should describe the cooperative arrangements with other local entities that will be used for delivery of services, specifically:
- A. What other educational services (tutoring, technological support, library, etc.) will be provided to the students to assist them in attaining their educational goals in the program?
 - B. What guidance is provided for post-program activities?
 - C. What support services will be provided to facilitate and assist the students in their educational endeavors? These might include childcare, transportation, counseling, job and career guidance, curriculum for special needs adults, innovative delivery of instruction, and other such services.

3.7 Budget Information

- 3.7.1 Bidders must describe the proposed contract expenditures in a detailed narrative. Include a line item budget (Attachment A).
- 3.7.2 Sustainability of Program: Describe how program sustainability will continue if and when contract funding ends.

**ADULT EDUCATION & LITERACY
EL/CIVICS AWARD PROGRAM BUDGET**

Attachment A (Revised)

Fiscal Year:	Local Agency:
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Review Appendix A of the Missouri State Plan for Adult Education to determine allowable expenditures.

	CATEGORY I Instruction	CATEGORY II Supervision/Administration
6110 Certified Salaries <i>(Teacher/Administrator)</i>		
6150 Classified Salaries <i>(Aides/Secretaries)</i>		
6200 Employee Benefits		
6300 Purchased Services		
6343 Professional Development/Travel		
6360 Communication		
6400 Supplies and Materials		
6500 Equipment		
TOTAL		

TOTAL ALLOCATION: _____

ADULT EDUCATION MAILING LIST

Please complete the blanks below with the name and address of the person who should receive all Adult Education correspondence.

Name: _____

Agency: _____

Address: _____

Business Telephone: _____ Fax: _____

CLASS SCHEDULE FORM

Attachment B (Revised)

Program: _____

[illegible]

* TYPE

- | | | |
|-----------------------------------|------------------------------------|------------------------------|
| 1. Elementary/Secondary School | 8. Library | 15. Job Corps |
| 2. Community College | 9. Community-Based Organization | 16. Distance Learning |
| 3. 4-Year College | 10. Probation & Parole | 17. Faith-Based Organization |
| 4. Housing Authority | 11. Even Start/Family Literacy | |
| 5. Mental Health Institution | 12. One-Stop Center | |
| 6. State Correctional Institution | 13. Local Correctional Institution | |
| 7. Work Site | 14. Nursing Home | |

MINIMUM QUALITY ASSURANCES

The contract agrees to:

1. Provide instruction at no cost to students.
2. Make provisions for adequate classrooms, furniture, and storage for students and instructors.
3. Plan for and provide facilities and instruction accessible to persons with disabilities.
4. Provide sufficient textbooks, standardized tests, and other instructional materials to meet the individual needs of students.
5. Inform adults in the areas served of the times and locations of classes.
6. Document each student's progress and mastery of instructional objectives.
7. Employ qualified teachers who are properly certificated by the Department.
8. Provide information about the availability of additional education and training for AEL students upon the completion of their AEL studies.
9. Include people on an AEL advisory committee to represent all areas served.
10. Provide assistance for each new teacher the first class session and until the director is satisfied that the teacher could handle the class without assistance.
11. Provide regular and systematic supervision and evaluation of each teacher at each site.
12. Record and keep on file, all required information on all students in EL/Civics classes.
13. Ensure the programs' activities and plan to conform to regulations outlined in the Missouri State Plan for Adult Education including Appendix C.

I am familiar with Appendix C of the Missouri State Plan for Adult Education. As Chief Executive Officer, I have reviewed this plan and verify that this agency, upon receipt of approval from the Department, will provide comprehensive and quality services as specified herein.

Superintendent or President or Chief Executive Officer

Date

STATE OF MISSOURI
Department OF ELEMENTARY & SECONDARY EDUCATION
TERMS AND CONDITIONS -- INVITATION FOR BID

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Department**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Applicant** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the Department. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Awardee** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the Department to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of Department.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the Department.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the responsibility to ask questions, request changes or clarification, or otherwise advise the Department if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the Department, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the Department in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The Department monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the Departments website. Registered vendors are electronically notified or mailed the IFB based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the bidder must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The Department reserves the right to officially amend or cancel an IFB after issuance.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the Department and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.

- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.

5. SUBMISSION OF BIDS

- a. Bids may not be submitted electronically as indicated in the IFB. Delivered bids must be sealed in an envelope or container, and received in the Department office located at 205 Jefferson Street in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the Department address shown on first page. However, it shall be the responsibility of the bidder to ensure their bid is in the Department office (address shown on front page) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid which has been delivered to the Department office, may be modified by signed, written notice which has been received by the Department prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid which has been delivered to the Department office, may only be withdrawn by a signed, written notice or facsimile which has been received by the Department prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. Bidders delivering a hard copy bid to Department must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the full compliance with those documents is indicated elsewhere within the response.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Prices shall be posted on the Department's website after the official opening date and time. The Department will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the Department office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMO. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the Department to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, Department reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the Department reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The Department reserves the right to reject any and all bids.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the Department to the successful bidder. The Department reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by Department based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMO following the official opening of bids.
- k. The Department posts all bid results on the website for a reasonable period after bid award and maintains images of all bid file material for review. Bidders who include an email address with their bid will be notified of the award results via email.
- l. The Department reserves the right to request clarification of any portion of the response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by Department.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) Department's acceptance of the response (bid) by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Department or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Department.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMO.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the Department, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the Department may cancel the contract. At its sole discretion, the Department may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide Department within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the Department will issue a notice of cancellation terminating the contract immediately.
- c. If the Department cancels the contract for breach, the Department reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the Department deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the Department immediately.
- b. Upon learning of any such actions, the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the Department shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the Department until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 12/19/02